

1 JUDGE SIPPEL: Do we have a copy of the
2 page?

3 MR. COOK: I do, Your Honor.

4 JUDGE SIPPEL: Okay, we'll go off the
5 record until counsel locates it.

6 (Whereupon, the matter went off the record
7 at 9:22 a.m. and back on the record at 9:22 a.m.)

8 JUDGE SIPPEL: All right. Mr. Cook, you
9 may approach the witness.

10 MR. COOK: Ms. Davis, I show you some
11 deposition excerpts from your deposition that we have
12 filed in this case. It's in the binder complainant's
13 designation of deposition testimony to be accepted
14 into evidence, and within that there are some pages
15 from your deposition. On page 99 of your deposition,
16 which for the record is complainant's deposition
17 excerpts page 153 in the larger volume, there is a
18 question that begins -- let's see -- okay, sorry -- 98
19 and 99 of your deposition -- I'll start page 98, line
20 23, (reading) "question -- now when you look --"

21 THE WITNESS: May I see that.

22 MR. COOK: Oh, absolutely. Yes. I'll

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1 read it, and you let me know if I'm reading it
2 correctly.

3 JUDGE SIPPEL: Do you -- do you have a
4 copy --

5 MR. COOK: Oh, I can --

6 JUDGE SIPPEL: -- for counsel's table?

7 MR. COOK: Exactly. And I can leave that
8 with the witness.

9 JUDGE SIPPEL: I don't think it's good to
10 be over her shoulder like that.

11 MR. COOK: Right. I think that's much
12 better. Okay, reading from page 98, line 23,
13 (reading) "now when you looked at the replacement cost
14 for a particular pole for the 40-foot pole, you were
15 looking at it to avoid the actual field conditions
16 that a cable operator might be experiencing with his
17 attachments to a particular pole. Answer -- that's
18 true" (end reading). Did I read that correctly?

19 THE WITNESS: You did read that correctly.
20 That is --

21 MR. COOK: Okay.

22 THE WITNESS: --- what I said that day.

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1 MR. COOK: Thank you. That's -- that's my
2 question. Thank you.

3 BY MR. COOK:

4 Q So for example, picking your \$55.00 rate
5 for 2005, that would apply to any pole that a cable
6 operator is on regardless of whether or not it could
7 host another attachment, correct?

8 A Yes.

9 Q Okay. And you've also said that
10 replacement cost calculations you made are a
11 representation of what it would cost a cable company
12 to go out and put up the poles themselves, correct?

13 A Representation of what that pole space
14 represents. It's a fair market value of that.

15 JUDGE SIPPEL: Is this in her testimony
16 someplace, what you're referring to?

17 BY MR. COOK:

18 Q Let me draw your attention to, if you
19 would, Ms. Davis, turn to page 158 of the bottom of
20 deposition excerpts, and this is page 125 of your
21 deposition. Okay? Do you have page 125 of your
22 deposition?

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1 A Yes, I do.

2 Q Okay. There is a question here. The
3 question is -- is -- follows on from before, but it
4 says, (reading) "I will object to that. I don't know
5 that we've established that. We has been your
6 testimony. Answer -- it is my testimony. The value
7 to the cable company -- I see the value to the cable
8 company to be represented by replacement cost, because
9 that is a reflection, a representation, of what it
10 would cost that cable company to go out and put up the
11 poles themselves. So there is value there to them,
12 they obtain from Gulf Power by being able to attach
13 and then pay for a percentage of the pole versus
14 themselves going out and adding poles that only they
15 were attached to" (end reading. Did I read that
16 question and answer correctly?

17 A You have.

18 Q Thank you. Now to you, Ms. Davis,
19 reproducing the property is synonymous with
20 replacement cost, correct?

21 A Yes.

22 Q And Gulf would, if permitted, charge your

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1 proposed replacement rates for every pole regardless
2 of whether complainants had, in the course of make
3 ready, actually paid the costs of the change-out or
4 the replacement of a particular pole, correct?

5 A That's correct, because the original
6 investment that the company has is still on the
7 company's books to which they need to be able to earn
8 a fair rate of return.

9 Q Now your calculations do not give any
10 consideration to whether a cable operator or other
11 attacher has paid make-ready costs to Gulf Power in
12 order to attach to a pole, right?

13 A That is not part of the calculation.

14 Q So the answer is correct.

15 A That's correct.

16 Q Okay. And if a cable operator has paid
17 for a change-out to a taller pole and Gulf has, as a
18 result, obtained more readily available capacity on a
19 particular pole for even more attachments, your
20 calculations do not allow for any credit back to the
21 cable operator for any additional rental that the pole
22 might generate for Gulf in the future, correct?

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1 A That is correct, because my calculations
2 are based on averages, not on a --

3 Q I understand that. Gulf would, if
4 permitted, charge your replacement cost rates to
5 complainants for every pole that they're on even when
6 no actual replacement of a particular pole is required
7 for complainants to remain attached, correct?

8 A You're talking about a pole that is --
9 does not require make-ready?

10 A Let me read my question again and see if -
11 - if you can understand it.

12 JUDGE SIPPEL: Are you -- just take his
13 question straight -- straight as you hear it, and just
14 answer the question directly, and then if he -- you
15 know, you'll get a chance later on to elaborate if --
16 if -- if it's needed. But just listen to the question
17 and answer it if you can. If you can't then tell him.

18 THE WITNESS: Okay.

19 BY MR. COOK:

20 Q Gulf would, if allowed in this case,
21 charge your replacement cost rates to complainants for
22 every pole they're on even when no actual replacement

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1 of a particular pole is required for complainants to
2 remain attached, correct?

3 A Yes.

4 Q Okay. And Gulf would charge your
5 replacement cost rates based on the costs of a new
6 pole to complainants for every pole they're on even
7 though complainants actually occupy only one foot of
8 the usable space on the poles they're on, correct?

9 A Yes. The calculation is based on a one
10 foot occupancy by the cable company.

11 Q I'd like to move to some costs about --
12 some questions about your -- your background and how
13 you got into developing the replacement cost
14 calculations. You have worked in the Rates and
15 Regulatory Matters Department from 1993 until
16 recently? Is that right?

17 A Yes.

18 JUDGE SIPPEL: The Department of what?

19 MR. COOK: Department of Gulf Power.

20 JUDGE SIPPEL: Okay.

21 MR. COOK: I'm sorry.

22 BY MR. COOK:

1 Q And the Rates Department of Gulf Power is
2 Gulf's interface with the Florida Public Service
3 Commission, right?

4 A Yes.

5 Q And you described your duties in the Rates
6 Department as tariff administration cost of service
7 activities, calculation of cost recovery factors and
8 regulatory filing functions. Is that right?

9 A That's accurate.

10 Q Ms. Davis, although you started in the
11 Rates Department of Gulf Power in 1993, you did not
12 get involved in calculating pole attachment rentals
13 for Gulf until the year 2000, correct?

14 A Yes.

15 Q And this is the first matter that you have
16 been involved with in which Gulf has sought to obtain
17 a pole attachment fee based on replacement costs,
18 correct?

19 A This is the first time I've testified on
20 this, yes.

21 Q Okay. But is it also the first matter
22 that you've been involved in, to your knowledge, where

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1 Gulf has ever sought to obtain a pole attachment fee
2 based on replacement costs?

3 A I've been involved since the year 2000.

4 Q Right. When I say the -- the first
5 matter, I mean the ongoing six year litigation between
6 complainants and Gulf. That --

7 A Yes.

8 Q -- would be the first instance, right?

9 A Yes.

10 Q Okay.

11 JUDGE SIPPEL: Can I -- can I ask why this
12 line of questioning? Is this to test her ability to
13 testify on the subjects?

14 MR. COOK: No, Your Honor. I'm getting to
15 the date in the next couple of questions where the
16 replacement cost calculations originated.

17 JUDGE SIPPEL: All right.

18 BY MR. COOK:

19 Q Now you first developed your replacement
20 cost methodology for a pole attachment rate in the
21 year 2000, correct?

22 A That is my recollection.

1 Q And you started developing replacement
2 cost calculations because you were asked by Michael
3 Dunn to make such calculations, right?

4 A Yes.

5 Q And Michael Dunn approved your
6 calculations, correct?

7 A We discussed it many times, and yes, he
8 approved them?

9 Q And Michael Dunn told you to use a 40-foot
10 pole for all of your replacement cost calculations,
11 correct?

12 A Yes, Mike represented to me that that was
13 the most common pole height from which cable companies
14 were attached.

15 Q Okay. Are you aware that the FCC
16 previously rejected Alabama Power's identical claim to
17 Gulf's that the average existing pole height should be
18 considered to be 40 feet?

19 MR. LANGLEY: Your Honor, I object to that
20 question.

21 JUDGE SIPPEL: Sustained.

22 MR. LANGLEY: Okay.

1 MR. COOK: Your Honor, may I show the
2 witness a document from our exhibits in which the
3 Commission made that ruling and ask the witness
4 whether she's aware of that?

5 JUDGE SIPPEL: What is it, a Commission
6 order?

7 MR. COOK: It's a Commission order. It's
8 --

9 JUDGE SIPPEL: Could we have it -- can we
10 put an excerpt up on the screen?

11 MR. COOK: It's in the -- it's in the
12 binders, Your Honor.

13 JUDGE SIPPEL: Do we have something we can
14 put up on the -- on the screen -- on the telescreen?

15 MR. COOK: Your Honor, I'm -- I'm not as
16 technically --

17 MR. COOK: Your Honor, if they give us an
18 exhibit number, we can put it up for them. We're
19 happy to do that.

20 JUDGE SIPPEL: There you go.

21 MR. COOK: That doesn't mean the
22 question's proper. We'll have to wait --

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1 JUDGE SIPPEL: I understand. No -- I
2 understand. I understand. But at least if we can go
3 through them. We don't have to get the documents in.
4 Can you give us the number of the exhibit?

5 MR. COOK: Yes, Your Honor. I'd like to
6 direct --

7 JUDGE SIPPEL: And then we move to Star
8 Wars --

9 MR. LANGLEY: Forty-eight.

10 MR. COOK: Right. The court and the
11 witness' attention to --

12 MR. LANGLEY: Forty-eight --

13 MR. COOK: -- to tab -- tab 48 -- of
14 complainant's exhibits, paragraph 59. Tab 48,
15 paragraph 59.

16 THE WITNESS: Your Honor, I can't read
17 that.

18 JUDGE SIPPEL: All right. They can take
19 the bullet out for you -- if they can get it for --

20 MR. COOK: I can also put the binder in
21 front of the witness. However Your Honor wishes to --

22 THE WITNESS: -- page number --

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1 JUDGE SIPPEL: Well, let's -- let's -- I
2 want to -- I want to test this system out.

3 MR. COOK: It's page 22, upper right-hand
4 corner, paragraph 59. There it is. If you can
5 highlight the last three sentences of that paragraph
6 beginning with -- or take the whole paragraph. Sure.
7 There you go. Okay? I'd like to begin this question
8 by reading the last three sentences of this paragraph.

9 JUDGE SIPPEL: Can you see that now?

10 THE WITNESS: Yes, sir, I can.

11 BY MR. COOK:

12 Q In this case, I'm starting three
13 sentences, I think, from the end, respondent could
14 have offered evidence --

15 A Excuse me.

16 Q Yes.

17 A Would you help me find my place here?

18 Q Sure.

19 A Okay. All right. I'm with you.

20 Q Okay. In this case --

21 JUDGE SIPPEL: Why don't you just have the
22 witness read it to herself --

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1 MR. COOK: Oh, okay.

2 JUDGE SIPPEL: -- and see if she's seen it
3 before?

4 MR. COOK: All right.

5 THE WITNESS: Your Honor, I've never seen
6 that before.

7 JUDGE SIPPEL: You've never seen that
8 before in -- in any way, shape or form?

9 THE WITNESS: I don't recall ever seeing
10 that before. No, sir.

11 BY MR. COOK:

12 Q So my next follow-up question would be
13 you're not aware that the Commission had previously
14 ruled on the question of whether a 40-foot pole was
15 the -- was a correct average for Alabama Power's pole
16 inventory, are you?

17 MR. LANGLEY: Your Honor, I object on two
18 grounds. Number one, it is calling for an
19 interpretation of an order in another case. Second,
20 it is a misleading question, because this part of the
21 order specifically says in this case, respondent could
22 have offered evidence of the specific height data for

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1 its cable attached poles which is exactly what Gulf is
2 doing in this case.

3 JUDGE SIPPEL: Well, be careful --

4 MR. COOK: My question --

5 JUDGE SIPPEL: -- be careful.

6 MR. COOK: My question was only is the
7 witness aware. The witness answered no. I'm prepared
8 to move on.

9 JUDGE SIPPEL: I -- I think that's where
10 we ought to leave it. You're going to be very careful
11 with that, where you're going with that, Mr. Langley,
12 because that can come back and backfire on you. That
13 can open a door which was -- which was being closed.
14 But that's okay. We're fine. I'm just -- I'm just
15 giving you a heads up on that. I'm not --

16 MR. LANGLEY: Okay.

17 JUDGE SIPPEL: -- no criticism. Okay.
18 Let's go.

19 BY MR. COOK:

20 Q Mr. Dunn gave you guidance in the year
21 2000 about what components should be included in the
22 replacement cost calculations, correct?

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1 A We had many discussions on that issue,
2 yes.

3 Q And he gave you guidance?

4 A He did.

5 Q Okay. Have you ever read the Eleventh
6 Circuit Alabama Power case, Ms. Davis?

7 A No, I haven't.

8 Q Okay. You don't know the year it was
9 decided, do you?

10 A No, I don't.

11 Q Okay. If it was decided in 2002, that
12 would be a couple of years after Mr. Dunn asked you to
13 develop replacement cost calculations, right.

14 A Yes.

15 Q Okay. And --

16 JUDGE SIPPEL: Well, we'll take judicial
17 notice of the fact that it was decided in 2002 so you
18 know --

19 MR. COOK: Right.

20 JUDGE SIPPEL: -- you know from whence
21 we're talking.

22 THE WITNESS: All right.

1 MR. COOK: My point was what the question
2 -- what the question -- that her costs came
3 beforehand.

4 JUDGE SIPPEL: Thank you.

5 BY MR. COOK:

6 Q You testified at your deposition that
7 while you were generally aware of the Alabama Power
8 litigation, that you were not aware about what the
9 court in that case said about just compensation,
10 right?

11 A Yes, sir.

12 MR. LANGLEY: Your Honor, I would like to
13 make an objection to this whole line of questioning.
14 I believe it is outside the scope of her direct
15 testimony. There's nothing in there about Alabama
16 Power case or the timing issues. I mean if Mr. Cook
17 can point us to a page and line of her direct
18 testimony, I'd consider withdrawing it, but I believe
19 it's outside the scope.

20 MR. COOK: It's -- it's certainly within
21 the fair scope to -- to question in this proceeding
22 where Gulf has the burden to present a cost

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1 methodology compliance with the governing legal
2 standard to ask the lead witness who is presented as
3 developing those calculations if she was not aware of
4 the governing standard. Now that I have established
5 that, I am prepared to move on.

6 JUDGE SIPPEL: All right. Well -- all
7 right. And I think that you've also established right
8 that the calculations were done --

9 MR. COOK: In 2000.

10 JUDGE SIPPEL: -- before 2002, before the
11 decision?

12 MR. COOK: That's right.

13 JUDGE SIPPEL: And does that mean that the
14 -- let me ask the witness this. Do you mean that the
15 methodology was prepared before 2002 or the actual
16 calculations were done before 2002 or both?

17 THE WITNESS: The methodology was prepared
18 prior to 2002, and some of the calculations were done
19 prior to 2002, but my testimony contained calculations
20 for the rates for the year 2000 through 2006.
21 Obviously, some of those were calculated after 2002.

22 JUDGE SIPPEL: All right. All right. And

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1 did -- were you ever instructed to or did you ever
2 take into consideration what the commission ha held in
3 2002 when you were doing those post 2002 calculations?

4 THE WITNESS: No, sir.

5 JUDGE SIPPEL: All right. Let's move
6 forward.

7 MR. COOK: Thank you, Your Honor. And a
8 follow-up question to --

9 JUDGE SIPPEL: I'm sorry, your objection
10 is sustained. There was -- I didn't rule on that.
11 His objection is sustained, but you withdrew the area
12 anyway so --

13 MR. COOK: And the methodology that you've
14 used to calculate replacement costs hasn't really
15 changed since the year 2000, has it?

16 THE WITNESS: No.

17 MR. COOK: The methodology?

18 THE WITNESS: No, it hasn't.

19 BY MR. COOK:

20 Q And your methodology did not follow the
21 FCC formula -- is that correct -- FCC cable rate
22 formula?

1 A No, it doesn't. I think I just --

2 Q Okay.

3 A -- testified to the fact that I did not
4 take that ruling into consideration.

5 MR. COOK: We should probably take that --

6 JUDGE SIPPEL: You know what would be --
7 would be very helpful, Mr. Cook, because this is an
8 important witness, is ask the witness if she
9 understands what the Commission formula is.

10 MR. COOK: I'm getting to that in a later
11 section, Your Honor. I'm just establishing now that
12 it didn't follow, that it was different from --

13 JUDGE SIPPEL: I know but you asked her if
14 it was different than something that you hadn't -- you
15 hadn't established as to whether or not the witness
16 knows even what you're talking about.

17 MR. COOK: I'm sorry. I didn't --

18 JUDGE SIPPEL: The formula. The formula.
19 You didn't --

20 MR. COOK: Oh, okay --

21 JUDGE SIPPEL: -- ask her if she
22 understands what the Commission formula is --

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1 MR. COOK: -- I'm happy to ask that.
2 Could we -- could I ask that that be taken down since
3 that -- we're no longer asking that --

4 JUDGE SIPPEL: Yes. Yes. We'll clear the
5 screen.

6 BY MR. COOK:

7 Q Okay. Are you familiar -- you are not
8 very familiar with the FCC cable rate formula, are
9 you?

10 A I am somewhat familiar with that. My
11 studies and my preparation have all been concentrated
12 on the replacement cost methodology.

13 Q Okay. So you did not follow the FCC cable
14 rate formula when you developed your replacement cost
15 calculations, right?

16 A That's correct.

17 Q Okay.

18 A And Mr. Dunn instructed you in the year
19 2000 to start with a fresh slate as opposed to using
20 the FCC regulations, right?

21 A Yes.

22 Q Okay. Now I'd like to turn to those

1 calculations that you have. In your testimony, you
2 say that the main flaw in the FCC's cable rate is that
3 it is based upon actual or embedded costs, correct?

4 A Yes. Would you tell me what page of my
5 testimony you're referring to?

6 Q Sure. That's on page five.

7 A I just want to keep up with you.

8 Q Okay.

9 JUDGE SIPPEL: We all do.

10 BY MR. COOK:

11 Q And you -- you have said that you are not
12 very familiar with all of the components within the
13 FCC cable rate formula. Is that correct?

14 A I believe that's true.

15 Q Okay. And you've testified that you're
16 not familiar with the FCC decisions that decide which
17 cost accounts go into the cable rate formula, correct?

18 A Yes.

19 Q Okay. Now you have also referred to your
20 replacement cost rates as unregulated rates, right?

21 A Can you show me where I did that?

22 Q Okay. Can I direct you using the

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1 deposition volume to complainant's deposition excerpt
2 page 163 and then within that to pages 149 to 150 on
3 the top half of that page. I'll start reading page
4 149, line 23. (Reading) "Question. As far as you
5 understand, your replacement cost rate would be an
6 unregulated rate then? Answer over on page 150. Yes"
7 (end reading). Did I read that correctly?

8 A Yes, this is --

9 Q Okay.

10 A -- correct.

11 Q And you've testified, I believe this is
12 page six of your testimony, that there are three main
13 elements of your replacement cost calculation, pole
14 investment, carrying charge, and space allocation,
15 right?

16 A Yes.

17 Q Okay. Let's talk about the first element,
18 pole investment first. Now this is where you used the
19 average unit cost of acquiring a brand new pole in the
20 year previous to the one that you're calculating for,
21 right?

22 A Yes.

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1 Q Okay. I'd like to refer you at this time
2 to Gulf Exhibit 52, and I don't know if you'd like to
3 put this up on the screen as the easiest way --

4 JUDGE SIPPEL: Let's try it.

5 MR. COOK: But this -- this would be Gulf
6 Exhibit 52, page 3 to start off.

7 THE WITNESS: Your Honor, this is a page
8 on which I have some written notes.

9 JUDGE SIPPEL: Well, could you -- all
10 right. Well, then let's -- this would be -- would
11 this be a good time to explain what the notes are
12 about?

13 THE WITNESS: I'd be happy to do that.

14 JUDGE SIPPEL: Okay. Mr. Cook, is that
15 okay with you?

16 THE WITNESS: It's okay but I'd also --

17 JUDGE SIPPEL: Well, how do you want to
18 proceed? You're -- you're asking the question.

19 THE WITNESS: May I approach to see what
20 the written notes are on that page to decide --

21 JUDGE SIPPEL: Is that okay?

22 THE WITNESS: That's fine.

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1 JUDGE SIPPEL: Sure. You may approach the
2 witness.

3 MR. COOK: Thank you. Your Honor, may --
4 may my colleague put a tab on the page so we can just
5 at the end recollect what pages we've referred to in
6 the testimony that have written notes?

7 JUDGE SIPPEL: Any objection to that?

8 MR. LANGLEY: No objection.

9 JUDGE SIPPEL: Tapping may proceed.

10 THE WITNESS: Okay.

11 MR. COOK: Thank you, Your Honor. My --
12 my preference, if -- if it is acceptable to your honor
13 would be to go ahead with my question, and then if the
14 question implicates any handwritten notes -- could
15 deal with that at that time.

16 JUDGE SIPPEL: That's fine.

17 MR. COOK: Okay.

18 JUDGE SIPPEL: You're -- you're -- you're
19 in charge. You're cross examining. Go ahead, sir.

20 MR. COOK: Thank you, Your Honor.

21 BY MR. COOK:

22 Q Ms. Davis, I'd like to draw your attention

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